

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8135 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 No.

BATUKBHAI RAVJIBHAI VAGRI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner
MR AB VYAS, AGP, for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 19/02/99

ORAL JUDGEMENT

The petitioner by way of this petition under Article 226 of the Constitution of India, has challenged the order dated 29.8.1998 passed by the Police Commissioner, Rajkot under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the Act").

In the grounds of detention supplied to the

detenu, the detaining authority has placed reliance on the two criminal cases - being C.R.No.288/98 and 467/98 filed against the detenu in the year 1998 for the offences punishable under Sections 324, 326 and 114 of the IPC and Sections 37(1) and 135 of the Bombay Police Act. The first one is pending in the competent court whereas the second one is at the investigation stage. Over and above these criminal cases, the detaining authority has also placed reliance on the statements of three witnesses of the incidents of 31-5-98, 7-6-898 and 9-8-98 , whose identity was not disclosed in exercise of the privilege conferred on him under section 9(2) of the Act.

As regards the incident of 31-5-98, the witness was beaten as he demanded the outstanding amount for buying cigarattes from him. As regards the incident of 7-6-98, the petitioner and his associate occupied the rickshaw of the witness and when the associate of the detenu tried to start the rickshaw of the witness and on refusal by the witnerss not to do so, the witness was beaten. As regards the incident of 9-8-98, there was already an outstanding amount of Rs.200/- from the detenu and when the detenu again demanded a further sum of Rs.400/- from the witness and when the witness refused to part with ther same, he was beaten. Not only that , Rs.80/- which were in the pocket of the witness were also taken away by the detenu. On all the occasions people gathered to watch the incidents. However, they dispersed when the petitioner and his associates rushed towards them with open knife with the result an atmosphere of fear and terror was created and the people started helter scalter and the shops were closed. On the basis of the aforesaid material, the detaining authority recorded a finding that the petitioner is a "dangerous person" within the meaning of Section 2 (c) of the Act and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, it is necessary to detain the detenu and therefore the impugned order of detention came to be passed against him.

My attention has been invited by the learned Advocate for the petitioner to the statements of the witnesses and it is contended that the alleged activities of the petitioner do not constitute breach of public order and, therefore, ther satisfaction arrived at by the detaining authority is not genuine. Having gone through ther statements of ther witneses closely, I find substance in the submission of the learned Advocate for the petitioner. Even if the allegations made in the statements of ther witneses are accepted to be true,

they at the most constitute breach of law and order but under no circumstances it can be construed as breach of public order. The statements are too general and vague and stereotype in nature. The cumulative reading of the statements, in my opinion, do not constitute breach of public order and, therefore, the satisfaction arrived at by the detaining authority in passing the order of detention under Section 3(1) of the Act is not genuine. Consequently, therefore, the continuous detention of the detenu is vitiated.

In the result, this petition is allowed. The order of detention dated 29-8-1998 is quashed and set aside. The detenu Batukbhai Ravjibhai Vagri is ordered to be set at liberty forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs.

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